

IN THE SENATE

SENATE BILL NO. 1309

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS; AMENDING SECTION
2 37-3303, IDAHO CODE, TO REVISE PROVISIONS RELATING TO MAXIMUM QUAN-
3 TITIES OF PSEUDOEPHEDRINE THAT CAN BE PURCHASED, TO PROVIDE THAT
4 RETAILERS SHALL USE AN ELECTRONIC TRACKING SYSTEM IN THE SALE OF PSEU-
5 DOEPHEDRINE PRODUCTS, TO PROVIDE EXEMPTIONS FOR RETAILERS AND TO DEFINE
6 A TERM; AMENDING CHAPTER 33, TITLE 37, IDAHO CODE, BY THE ADDITION OF A
7 NEW SECTION 37-3303A, IDAHO CODE, TO PROVIDE FOR AN ELECTRONIC TRACKING
8 SYSTEM FOR PSEUDOEPHEDRINE SALES, TO PROVIDE FOR REQUIRED INFORMATION,
9 TO PROVIDE FOR THE USE OF RECORDS GATHERED, TO AUTHORIZE THE BOARD OF
10 PHARMACY TO PROMULGATE AND ENFORCE RULES AND TO LIMIT THE LIABILITY OF
11 RETAILERS.
12

13 Be It Enacted by the Legislature of the State of Idaho:

14 SECTION 1. That Section 37-3303, Idaho Code, be, and the same is hereby
15 amended to read as follows:

16 37-3303. LIMITATIONS ON SALES AND PURCHASES. (1) It shall be unlawful
17 for any retailer to knowingly sell, transfer or otherwise furnish in a single
18 ~~transaction day~~ a pseudoephedrine product or products containing more than
19 ~~nine a base amount of three and six-tenths (93.6)~~ grams of pseudoephedrine.

20 (2) It shall be unlawful for any person to knowingly purchase from a re-
21 tailer more than the daily sales limit of a pseudoephedrine product or prod-
22 ucts containing a base amount of three and six-tenths (3.6) grams per pur-
23 chaser or more than a base amount of nine (9) grams of pseudoephedrine from
24 a retailer in a single thirty (30) day period, regardless of the number of
25 transactions.

26 (3) ~~At the time of distribution or sale of a pseudoephedrine product or~~
27 ~~products, t~~The retailer shall ensure that not sell the pseudoephedrine prod-
28 uct unless the purchaser presents a ~~government-issued photo~~ photographic
29 identification card issued by a state or by the federal government.

30 (4) (a) A retailer shall, before completing a sale under the provisions
31 of this section, submit the required information to the electronic
32 sales tracking system established under section 37-3303A, Idaho Code,
33 as long as such a system is available without charge to the retailer
34 for accessing the system. The retailer may not complete the sale if
35 the system generates a stop sale alert, except as permitted in section
36 37-3303A, Idaho Code.

37 (b) If a retailer selling a nonprescription pseudoephedrine product
38 experiences mechanical or electronic failure of the electronic sales
39 tracking system and is unable to comply with the electronic sales track-
40 ing requirement, he or she shall make available for inspection by any
41 law enforcement officer or board inspector during normal business hours
42 the logbook required by the federal combat methamphetamine epidemic act

1 of 2005 until such time as he or she is able to comply with the electronic
2 sales tracking requirement.

3 (c) A retailer selling a nonprescription pseudoephedrine product may
4 seek an exemption from submitting transactions to the electronic sales
5 tracking system in writing to the board of pharmacy stating the rea-
6 sons for the exemption. The board may grant an exemption for good cause
7 shown, but in no event shall a granted exemption exceed one hundred
8 eighty (180) days. The board may grant multiple exemptions for any
9 retailer if the good cause shown indicates significant hardship for
10 compliance with this section. A retailer that receives an exemption
11 shall make available for inspection by any law enforcement officer or
12 board inspector during normal business hours the logbook required by
13 the federal combat methamphetamine epidemic act of 2005. For purposes
14 of this subsection, "good cause" includes, but is not limited to, situ-
15 ations where the installation of the necessary equipment to access the
16 system is unavailable or cost prohibitive to the retailer.

17 (d) A retailer may withdraw from participating in the electronic sales
18 tracking system if the system is no longer being furnished without
19 charge for accessing the system. A retailer who withdraws from the
20 electronic sales tracking system is subject to the same requirements
21 as a retailer who has been granted an exemption under subsection (c) of
22 this section.

23 (e) For the purposes of subsection (4) of this section and section
24 37-3303A, Idaho Code:

- 25 (i) "Charge for accessing the system" means charges relating to:
26 1. Access to the web-based electronic sales tracking soft-
27 ware;
28 2. Training; and
29 3. Technical support to integrate to point of sale vendors,
30 if necessary.
- 31 (ii) "Charge for accessing the system" does not include:
32 1. Charges relating to required internet access;
33 2. Optional hardware that a pharmacy may choose to purchase
34 for work flow purposes; or
35 3. Other equipment.

36 SECTION 2. That Chapter 33, Title 37, Idaho Code, be, and the same is
37 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
38 ignated as Section 37-3303A, Idaho Code, and to read as follows:

39 37-3303A. ELECTRONIC TRACKING SYSTEM. (1) The board of pharmacy shall
40 implement a real-time electronic sales tracking system to monitor the non-
41 prescription sale of pseudoephedrine products in this state provided that
42 such system is available to the state without charge for accessing the sys-
43 tem to the state or retailers. If a real-time electronic sales tracking sys-
44 tem is not available to the state without charge for accessing the system to
45 the state or retailers, the board of pharmacy shall not be required to create
46 such a system.

47 (2) The records submitted to the tracking system shall include the fol-
48 lowing:

- 49 (a) The purchaser's name and address;

- 1 (b) The purchaser's signature, either on a written form or stored elec-
2 tronically in the tracking system, attesting to the validity of all in-
3 formation provided;
- 4 (c) The type of photographic identification presented pursuant to sec-
5 tion 37-3303, Idaho Code;
- 6 (d) The number and issuing government entity of the photographic iden-
7 tification presented;
- 8 (e) The date and time of sale; and
- 9 (f) The name and quantity of the product sold.
- 10 (3) The records submitted to the tracking system are for the confiden-
11 tial use of the retailer who submitted such records, except that:
- 12 (a) The records must be produced in court when lawfully required;
- 13 (b) The records must be open for inspection by the board of pharmacy;
14 and
- 15 (c) The records must be available to any general or limited authority
16 Idaho peace officer to enforce the provisions of this chapter or to fed-
17 eral law enforcement officers.
- 18 (4) The electronic sales tracking system shall be capable of generating
19 a stop sale alert, which shall be a notification that completion of the sale
20 would result in the seller or purchaser violating the quantity limits in sec-
21 tion 37-3303, Idaho Code. The system shall contain an override function for
22 use by a dispenser of pseudoephedrine products. Each instance in which the
23 override function is utilized shall be logged by the system.
- 24 (5) The board of pharmacy shall have the authority to adopt rules nec-
25 essary to implement and enforce the provisions of this section and section
26 37-3303, Idaho Code.
- 27 (6) A retailer participating in the electronic sales tracking system:
- 28 (a) Is not liable for civil damages resulting from any act or omission
29 in carrying out the requirements of this section or section 37-3303,
30 Idaho Code, other than an act or omission constituting gross negligence
31 or willful or wanton misconduct; and
- 32 (b) Is not liable for civil damages resulting from a data breach that
33 was proximately caused by a failure on the part of the electronic sales
34 tracking system to take reasonable care through the use of industry
35 standard levels of encryption to guard against unauthorized access to
36 account information that is in the possession or control of the system.